IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1031 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DAHYAI PITAMBARBHAI VANKAR

Appearance:

1. Criminal Appeal No. 1031 of 1990

MS HANSA PUNANI APP for State

MS KP SHAH for Respondent No.1 is not present

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 04/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.P.DHOLAKIA)

This Criminal Appeal under sec.378 of the Code of Criminal procedure is directed against the judgement and

order of acquittal dtd.22/8/1990 passed by the learned Additional City Sessions Judge, Court No.4, Ahmedabad City in Sessions Case No.130 of 1989 whereby the respondent - original accused has been acquitted from the charges levelled against him for the offences punishable under sections 20(b) of Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as the "NDPS Act" for short) and under sec.66(1)(B) of Bombay Prohibition Act (hereinafter referred to as the "BP Act" for short).

2. Short facts of the prosecution case are as under;-

That on 22/1/1989, Mr.Vadgama, PSI of Kagdapith Police Station, Ahmedabad was on patrolling along with his police personnel of Surveillance Squad and when he reached near Kankaria Zoo, he received information at about 11.05 a.m. that the accused who is absconding in connection with the offence registered with the Kagadapith Police Station vide Crime Register No.45 of 1989 is sitting under a tree in Devkinandan garden, near Kankaria Zoo, Balvatika, Ahmedabad. Upon the receipt of the said information, complainant - PSI Mr.Vadgama requested two persons to act as Panch witnesses. Thereupon along with the other members of the Surveillance Squad and Panchas, he reached the spot where the accused was sitting under a tree and enquired about his name and he replied that his name is Dahyabhai Pitambarbhai Vankar and on his search, from the right hand, a writ watch of Titan Company was found and from the right side pocket of pant, a plastic packet containing three pieces of substance of black and brown colour were found. Upon smelling the substance, they suspect to be Charas contraband article. Hence the accused was apprehended and the Muddamal, Charas and watch, have been seized, Panchnama to that effect has been prepared on the spot. On receiving the complaint, Panchnama, muddamal and the accused, the PSO of Kagdapith Police Station, registered the offence before the Kagdapith Police Station vide CR No.I-40 of 1989 for the offences punishable under sections 8 and 20(b) of NDPS Act and under sec.66(1)(B) of BP Act; the accused was arrested; other formalities were completed; further investigation was started; the muddamal contraband article was sent to Forensic Science Libratory (hereinafter referred to as the "FSL" for short) for analysis. At the end of investigation, chargesheet was filed against the respondent - original accused and it was numbered as Sessions Case No.130 of 1989 and the same was assigned to the learned Additional City Sessions Judge, Court No.4, Ahmedabad. The charge was framed under sections 20(b)(2) of NDPS Act and under

sec.66(1)(b) of BP Act on 23/3/1990.

3. As the accused was not pleaded guilty and prayed for trial, the learned Additional Sessions Judge proceeded with the trial. To prove the guilt, the prosecution has examined the following witnesses ;- Ushaben Indubhai Pujara, No.1 Ex.8, Smt.Rajnikanta Narendrakumar Shah, PW NO.2 Ex.13 both Senior Scientists of FSL to prove FSL Report Ex.12, Akramkhan Ajimkhan Pathan PW No.3 Ex.No.15, Panch Witness, to prove search and seizure Ex.16, Jasvantsinh Chhanabhai Chavada PW No.4 Ex.17, PSO - Chavda, Kagadapith Police Station who received FSL, Panchnama, Muddamal and accused and he registered the FIR, Shelkhan Umarkhan Chauhan, PW No.5, Ex.20, Crime Writer Head of Kagdapith Police Station who received Muddamal from PSO, and Chandubhai Hirjibhai Vadgana complainant PSI, PW No.6 Ex.23.

The prosecution has placed reliance on the following documentary evidence :- FIR Ex.24, Panchnama of Search and Seizure Ex.16, Report under sec.157 of the Code of Criminal Procedure Ex.34, Forwarding letter of FSL Ex.11, Report of the of the of the FSL Ex. Nos.12 and 14, Ravangi Nondh to FSL Ex.25, Receipt issued by the FSL for receipt of Muddamal for analysis Ex.10, Relevant entry of Kagdapith Police Station of Anamat Register Ex.21, Station Diary and Entry No.20 of 1989 Ex.18 and Muddamal Receipt Ex.19.

4. On submission of the purshis by the prosecution, learned Additional City Sessions Judge recorded further statement of the respondent accused under sec.313 of the Code of Criminal Procedure wherein the respondent accused requested for examination of Jivanbhai Daghrabhai Rathod as defence witness and accordingly said Jivanbhhai D.Rathod has been examined at Ex.28. Thereafter, after hearing the learned advocate for the respondent - accused and learned Assistant Public Prosecutor, and considering the evidence on record, learned Additional City Sessions Judge, acquitted the respondent accused from the charges levelled against him while passing the impugned judgement and order, as stated hereinabove.

5. Learned APP for State has mainly placed his reliance on the the depositions of PW No.1 namely Ushaben Indubhai Pujara, at Ex.8, Smt.Rajnikanta Narendrakumar Shah, PW NO.2 Ex.13 both Senior Scientists of FSL, Akramkhan Ajimkhan Pathan PW No.3 Ex.No.15, Panch Witness of search and seizure Panchnama, Jasvantsinh Chhanabhai

Chavad PW No.4 Ex.17, PSO Kagadapith Police Station Shelkhan Umarkhan Chauhan, PW No.5, Ex.20, Crime Writer Head of Kagdapith Police Station and Chandubhai Hirjibhai Vadgama, PW No.6 Ex.23 - Complainant PSI. The learned APP has also placed his reliance on the documentary evidence namely FIR Ex.24, Panchnama of Search and Seizure Ex.16, Report under sec.157 of the Code of Criminal Report under sec.157 of the Code of Criminal Procedure Ex.34, Forwarding letter of FSL Ex.11, Report of the FSL Ex.Nos.12 and 14, Ravangi Nondh to FSL Ex.25, Receipt issued by the FSL for receipt of Muddamal for analysis Ex.10, Relevant entry of Kagdapith Police Station of Anamat Register Ex.21, Station Diary and Entry No.20 of 1989 Ex.18, Muddamal Receipt Ex.19.

6. She took us to the FIR, Panchnama, evidence of panch witness Akramkhan PW 3 Ex.15, through whom the prosecution has tried to prove the Panchnama Ex.16, evidence of Jasvantsinh Chhanabhai Chavda, PSO who has categorically deposed in his evidence that on receiving the complaint, panchnama, muddamal and accused, he registered the offence and also issued receipt for obtaining muddamal Ex.19 and same muddamal has been handed over by him to the Crime Writer Head at 4.00 p.m. To prove the link, she has also took us through the oral evidence of Crime Writer Head, Shelkhan Umarkhan Chauhan PW 5 Ex.20 who has deposed that he received the muddamal on the same day i.e. on 22/1/1989 at 4.00 p.m. and he made entry to that effect in Anamat Register and he has also proved the said entry vide Ex.34; he has further deposed that he has sent the muddamal to the FSL ON 14/2/1989, he has received the muddamal at 4.00 p.m. on the same day i.e. on 22/1/1989 and entry to that effect hce on record that as been made in Anamat Register at Ex.34 and to prove the search and seizure, learned APP has taken us through the oral evidence of PSI Vadagama Ex.23 and also the relevant discussion of the impugned judgement of acquittal more particularly page 12 onwards. Drawing attention to the said evidence, it has been argued by the learned APP that the muddamal which was seized from the respondent accused was sent to the FSL and same muddamal has been received by the officers of the FSL and same has been analyzed by him and therefore, other minor discrepancies ought not to have taken into consideration by the court below. It has been argued by her that the prosecution has proved the guilt beyond reasonable doubt. The muddamal alleged to have been seized from the respondent accused was sent to the FSL and the officers of the FSL received the same muddamal and the same muddamal has been analyzed by the officers of the FSL and which is proved as contraband article and

therefore, the trial court has erred in acquitting the respondent accused.

7. Having heard Ms.Hansa Punani, learned APP for the state and considering the evidence on record, it is clear that the respondent accused has been acquitted mainly on the ground that the Muddamal which is alleged to have been recovered from the respondent accused is not proved beyond reasonable doubt by the prosecution as well as on the ground that the prosecution has failed to prove that the same muddamal which is alleged to have been recovered from the respondent accused, was sent to FSL for analyses and same has been received and analysed by the officers of the FSL.

It established from the evidence on record that the officers of the FSL received the muddamal alleged to have been seized from the respondent accused on 14/2/1989 but the entry in the Miscellaneous Register of the police station indicates that the muddamal was sent to FSL for analysis on 31/1/1989 and, therefore, it has been established from the oral as well as documentary evidence that on 31/1/1989 the muddamal was handed over to the concerned person for the purpose of handing over the same to the FSL but the muddamal has not been reached to the FSL till 14/2/1989 and the officers of the FSL received the muddamal on 15/2/1989. No explanation has been put-forward by the prosecution regarding delay of 15 days as stated hereinabove and there is no explanation regarding the fact that during the said period of aforesaid 15 days, the muddamal was remained under whose custody and that after 15 days, the same muddamal which was seized from the respondent accused, was sent to the FSL an the officers of the FSL received the same muddamal in tact for analysis.

8. Under the circumstances, the we are of the opinion that the prosecution has failed to prove that the muddamal which is alleged to have been seized from the accused have remained under the custody of the of the authorized person in intact condition and the same has been reached to the FSL and same has been analyzed by the officers of the FSL; and the prosecution has failed to prove place any satisfactory evidence on record to satisfy the conscious of the court that for a period of 15 days, the muddamal has been remained under the safe custody and there were no possibility of tampering with the same. In such circumstances, the cumulative effect will resulted into acquittal by the trial court and we also share same view.

9. In view of the above it is clear that the prosecution has failed to prove the guilt against the respondent accused beyond reasonable doubt and hence we are quite agree with the findings recorded by the trial court and we see no reason to interfere with the impugned judgement and order of acquittal.

10. In view of the above, the appeal is dismissed.

(R.P.DHOLAKIA,J.)

rafik (SHARAD D.DAVE,J.)